

ORDINANCE NO. 2110

CITY OF MADISON HEIGHTS, OAKLAND COUNTY, MICHIGAN

AMENDMENT TO THE CODE OF ORDINANCES

An Ordinance to amend Ordinance No. 571, being an Ordinance codifying and adopting a new Code of Ordinances for the City of Madison Heights, by amending Chapter 16, Article V, Sections 16-71, 16-72, and 16-73, of the Code of Ordinances, City of Madison Heights, Michigan.

THE CITY OF MADISON HEIGHTS ORDAINS:

SECTION 1. AMENDMENT: Chapter 16, Article V, Sections 16-71, 16-72 and 16-73 are hereby amended in their entirety to read as follows:

Article V. - PURCHASE, POSSESSION, USE OF TOBACCO PRODUCTS, VAPOR PRODUCTS OR ALTERNATIVE NICOTINE PRODUCTS BY MINORS; SELLING, GIVING OR FURNISHING TOBACCO PRODUCTS, VAPOR PRODUCTS OR ALTERNATIVE NICOTINE PRODUCTS TO MINORS.

Section 16.71 – Purchase, possession or use of tobacco products, vapor products or alternative nicotine products by minors in public; penalty;

A person under 18 years of age shall not purchase, possess or use a tobacco product, a vapor product or an alternative nicotine product, in any form, on a public highway, street, alley, park, or other lands used for a public purpose, or in a public place of business or amusement in the city. A person who violates this section is responsible for a civil infraction punishable by a fine of not more than \$100.00 for a first offense and \$500.00 for a second or subsequent offense.

Section 16-72 – Definitions as used in the article:

(a) "Tobacco products" mean any product that contains nicotine or synthetic nicotine, or its equivalent, and is used for smoking, chewing, sucking, inhaling or placing against the gums of a user. This includes but is not limited to any cigarette, cigar, cigarillo, little cigar, pipe tobacco, chewing tobacco, tobacco snuff or other kinds and forms of tobacco.

(b) "Vapor products" mean any product that contains nicotine or synthetic nicotine, or its equivalent, that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, that can be used to produce a vapor or mist, in a solution or other form. This includes but is not limited to any electronic cigarette, electronic cigar, electronic cigarillo,

electronic little cigar, electronic pipe, hookah, vaporizer or similar product or device and any cartridge or other container of nicotine or synthetic nicotine, or its equivalent, in a solution or other form.

(c) "Alternative nicotine products" mean any product containing nicotine or synthetic nicotine, or its equivalent, intended for human consumption or use, whether chewed, absorbed, dissolved, or ingested by any means.

(d) The terms "Tobacco products," "Vapor products" or "Alternative nicotine products" shall not include products regulated by the United States Food and Drug Administration under Chapter V of the Food, Drug and Cosmetic Act.

Sec. 16-73. – Tobacco products, vapor products or alternative nicotine products; furnishing to minors; public health department sign, affirmative defense, rebuttal and penalty.

(1) No person in the City of Madison Heights shall sell, give to or in any way furnish tobacco products, vapor products or alternative nicotine products, in any form, to any person under 18 years of age. A person who violates this section or section (2) is guilty of a misdemeanor punishable by a fine of not more than \$100.00 for a first offense and/or 90 days imprisonment and by a fine of not more than \$500.00 for a second or subsequent offense and/or 90 days imprisonment.

(2) A person who sells tobacco products, vapor products or alternative nicotine products, at a retail location, shall post, in a place close to the point of sale and conspicuous to both employees and customers, a sign produced by the State of Michigan Department of Public Health, or a sign produced by the person in absence of a sign produced by the State of Michigan Department of Health, that includes the following statement or its equivalent:

"The purchase, possession or use of tobacco products, vapor products or alternative nicotine products by a minor under 18 years of age and/or the selling, giving or furnishing of tobacco products, vapor products or alternative nicotine products to a minor are prohibited by law. A minor unlawfully purchasing, possessing or using tobacco products, vapor products or alternative nicotine products, is subject to civil penalties. A person unlawfully selling, giving or furnishing tobacco products, vapor products or alternative nicotine products to a minor is subject to criminal penalties."

(3) If the sign required under subsection (2) is more than six feet from the point of sale, it shall be five and one-half inches by eight and one-half inches, and the statement required under subsection (2) shall be printed in 36-point boldface type (approximately three-eighth-inches high). If the sign required under subsection (2) is six feet or less from the point of sale, it shall be two inches by four inches and the statement required under subsection (2) shall be printed in 20-point boldface type (approximately one-fourth-inches high).

(4) The Michigan Department of Public Health has been mandated under state statute [MCL 722.641(4)] to produce such signs as they pertain to tobacco products. Licensed wholesalers, secondary wholesalers, and unclassified acquirers of cigarettes and other tobacco products described in subsection (1) are required under state statute [MCL 722.641 (4)] to obtain copies of the sign from the Michigan Department of Public Health and distribute them free of charge, upon request, to persons who are subject to subsection (2). The Michigan Department of Public Health is mandated under state statute to provide copies of the sign free of charge, upon request, to persons subject to subsection (2) who do not purchase their supply of cigarettes or other tobacco products described in subsection (1) from licensed wholesalers, secondary wholesalers, and unclassified acquirers of cigarettes and other tobacco products described in subsection (1).

(5) If such a sign as required above has not yet been produced by the Michigan Department of Public Health to include prohibitions of vapor products and alternative nicotine products, the retailer who sells such products may use a sign produced by the Michigan Department of Health for tobacco products and must produce and post its own sign regarding the prohibition of vapor products and alternative tobacco products, at a size and in boldface type, as required by subsection (3).

(6) It is an affirmative defense to a charge pursuant to subsection (1) that the defendant had in force at the time of arrest and continues to have in force a written policy to prevent the sale of tobacco products, vapor products and alternative nicotine products to persons under 18 years of age, and that the defendant enforced and continues to enforce such a policy. A defendant who proposes to offer evidence of the affirmative defense described in this subsection shall file and serve notice of this affirmative defense, in writing, upon the court and the city attorney. The notice shall be served not less than fourteen days before the date set for trial.

(7) A city attorney who proposes to offer testimony to rebut the affirmative defense described in subsection (6) shall file and serve a notice of rebuttal, in writing, upon the court and the defendant. The notice shall

be served not less than seven days before the date set for trial, and shall contain the name and address of each rebuttal witness.

SECTION 2: REPEALER:

All ordinances, or parts of ordinances, in conflict with the revisions of this ordinance are repealed only to the extent necessary to give the revisions of this ordinance full force and effect.

SECTION 3. SEVERABILITY:

Should any section, subdivision, clause, or phrase in this ordinance be declared by the court of law, with competent jurisdiction, to be invalid, the validity of the ordinance as a whole, or in part, shall not be affected other than the part so invalidated.

SECTION 4. SAVINGS:

All proceedings pending and all rights and liabilities existing, acquired or incurred at the time this ordinance takes effect, are saved and may be consummated according to the law in force when they were commenced.

SECTION 5. EFFECTIVE DATE:

This ordinance as ordered shall take effect ten (10) days after its adoption by the Madison Heights City Council and upon its publication.

SECTION 6. INSPECTION.

A copy of this ordinance may be inspected or purchased at the Madison Heights City Clerk's office between the hours of 8:00 a.m. and 4:30 p.m. on regular business days.

Brian C. Hartwell, Mayor

Cheryl E. Printz, City Clerk

CERTIFICATION:

I, Cheryl E. Printz, the duly appointed Acting City Clerk of the City of Madison Heights, County of Oakland, State of Michigan, do hereby certify that the foregoing is a true and correct copy of an Ordinance adopted by the Madison Heights City Council at their Regular Meeting held on April 25, 2016.

ADOPTED: April 25, 2016
PUBLISHED: May 4, 2016
EFFECTIVE: May 5, 2016

Cheryl E. Printz, City Clerk